

October 20, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L03P0020**
Proposed Ordinance no. **2004-0323**

KAHN SUBDIVISION
Preliminary Plat Application

Location: Northwest corner of the intersection of SE Covington-Sawyer Road and
216th Avenue Southeast

Applicant: Kahn Family LLC, *represented by*
Nancy Bainbridge Rogers
Cairncross & Hemplemann
524 Second Avenue, #500
Seattle, Washington 98104-2323
Telephone: (206) 587-0700
Facsimile: (206) 587-2308

King County: Department of Development and Environmental Services, *represented by*
Kim Claussen and Bruce Whittaker
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7167 and 296-7211
Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:

Department's Final Recommendation:

Examiner's Decision:

Approve, subject to conditions

Approve, subject to revised conditions

Approve, subject to revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:

Hearing Closed:

September 20, 2004

October 19, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer: Kahn Family LLC
Attn. Jack Kahn
515 97th Place Southeast
Bellevue, WA 98004

Engineer: Barghausen Consulting Engineers
18215 72nd Avenue South
Kent, WA 98032
425-251-6222

STR: 04-21-06

Location: The site is located at the northwest corner of the intersection of SE Covington-Sawyer Road and 216th Avenue Southeast

Zoning: R-4
Acreage: 23.57 acres
Number of Lots: 98 lots
Density: 4.16
Lot Size: Ranges
Proposed Use: Single Family Detached Dwellings and Townhomes
Sewage Disposal: Soos Creek Water & Sewer District
Water Supply: Covington Water District
Fire District: King County District #17
School District: Kent
Complete Application Date: September 18, 2003

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the August 20, 2004, public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. The Kahn Family LLC has filed a preliminary plat application to subdivide 23.57 acres into 98 lots for detached single-family and town house residential development. The property is located in the Urban Area adjacent to the City of Black Diamond to its immediate west.
4. A mitigated determination of non-significance was issued for the proposal by King County DDES on July 9, 2004. The conditions of mitigation include a provision for wetland fencing and

for mitigation of traffic impacts at the Southeast 228th Street/216th Avenue Southeast intersection. The Applicant will be required to widen 216th Avenue Southeast to provide a refuge lane for westbound to southbound left turn traffic from Southeast 288th Street. The SEPA condition needs to be corrected to identify the movement as being westbound to southbound, rather than eastbound to southbound as originally stated by DDES. A timely appeal of the MDNS was filed by the City of Maple Valley, asserting additional unmitigated traffic impacts from the project along the SR 516 corridor. Prior to the hearing the City withdrew its SEPA threshold determination appeal.

5. At the end of the September 20, 2004 public hearing the proceeding was continued to allow the parties and the Black Diamond Fire Department, which provides contract services to King County Fire District #17, to submit additional documents relating to the plat's potential impacts to fire service facilities and on the feasibility of extending plat lots to include portions of an on-site BPA power line easement. The Applicant and the Black Diamond Fire Department have submitted to the record an agreement for voluntary mitigation of fire service impacts based on a contribution to the Fire Department of \$1,052 per lot. A quarter of this sum will be paid at final plat recording with the remainder due at the time building permits are issued for the individual lots.
6. Seven of the 98 lots proposed for development are based on the transfer of density credits pursuant to KCC Chapter 21A.37. At the time the staff report was issued a letter of intent supporting this transfer had not been submitted by the Applicant. That letter of intent has now been submitted to the record, and a legally adequate foundation for the density credit transfer has been established.
7. The traffic impact issues raised by the Maple Valley appeal were focused on two intersections north of the plat on SR 516 at 216th Avenue Southeast and Witte Road Southeast. The traffic study documents demonstrate that both intersections will function at better than a level of service F condition during the project's horizon year and that further impact mitigation is not required under applicable County standards. A current level of service F condition exists at the plat's southeast corner at the intersection of 216th Avenue Southeast/Southeast Covington-Sawyer Road. The plat, however, will have two access points on either side of this intersection, one on 216th Avenue Southeast and the second on Southeast Covington-Sawyer Road. With the majority of plat traffic distributing toward the west and north, commuters from the Kahn Subdivision during peak hours will not for the most part utilize this congested intersection. Therefore, despite its proximity to the plat, the 216th Avenue Southeast/Covington-Sawyer Road intersection will not attract a level of peak hour traffic that meets the County's 30-trip mitigation threshold.
8. Surface water runoff will be infiltrated on-site. A geotechnical study performed by the Applicant has confirmed that soils permeability is adequate to accept infiltration. Indeed the rate of infiltration is sufficiently rapid that the more pertinent question may be whether contamination impacts to the groundwater table or an aquifer should be anticipated. This issue will be reviewed at final engineering submittal.
9. Black Diamond and its potential annexation area comprise an island of urban development surrounded by rural properties. Consequently the Black Diamond Fire Department is currently a mostly volunteer unit that lacks the staffing and infrastructure capacity to provide an urban level of service. The voluntary contribution agreement entered into between the Applicant and the

Black Diamond Fire Department is designed to help fund the long-term improvements necessary for the Department to provide an urban level of service. In addition to reliance on the voluntary contribution agreement, DDES will need to review the plat in terms of the fire services actually available at the time of development to ascertain whether some of the plat lots will need to be sprinklered.

10. Twenty-nine of the lots proposed within the Kahn Subdivision are adjacent to a 350 foot wide Bonneville Power Administration transmission line easement. The Applicant has proposed to plat the back 40 feet of each of these lots within the easement boundary. BPA appears prepared to consent to the platting of lot rear yards within the easement area subject to a rather stringent condition that each lot owner “must apply to BPA directly prior to the use of the right-of-way” and that such requirement must be recited within the plat’s CC&R’s. As shown within the preliminary plat map, the BPA easement through the Kahn property contains two transmission facilities, Vantage-Covington No. 1 and No. 2. The accompanying photographs show that the BPA transmission facility consists of two parallel rows of steel towers ranging between 50 and 75 feet wide at their tops each with three arrays of wires strung between them. The width of the portion of the right-of-way actively used by BPA for transmission purposes cannot be precisely ascertained from this record, but it appears that this actual use area would not include the 40 feet along each easement boundary proposed for lot inclusion. Staff opposed approving the portions of lots proposed within the BPA easement area on the basis that current county codes require the entire utility easement to be set aside within a separate tract.
11. Exhibit 46 is a letter submitted by the Applicant on October 4, 2004 pursuant to continuance of the September 20, 2004 hearing. In it the Applicant made reference to the pendency before the County Council of amendments to the Zoning Code that may alter the regulations affecting utility corridors. The suggestion was that these amendments, if adopted, could clarify that inclusion of the BPA easement into plat lots is restricted only to the portion of the easement actually used for transmission activity. Based on that potential regulatory change, the Applicant requested that the hearing be continued on call. Subsequently, on October 19, 2004, the Applicant asked instead that the subdivision decision be issued subject to a condition allowing later modification of the plat map if the appropriate amendments for inclusion of easement area into lots were in fact adopted. The October 19, 2004 letter notes that the proposed lot sizes meet minimum County standards even if the BPA easement area is excluded.

CONCLUSIONS:

1. The question of whether the Zoning Code permits the incorporation of portions of a BPA transmission easement into adjacent lots is governed by the following provisions:

21A.06.980 Regional utility corridor. Regional utility corridor: a right-of-way tract or easement other than a street right-of-way which contains transmission lines or pipelines for utility companies. Right-of-way tracts or easements containing lines serving individual lots or developments are not regional utility corridors.

21A.12.140 Setbacks – from regional utility corridors.

- A. In subdivisions and short subdivisions, areas used as regional utility corridors shall be contained in separate tracts.

- B. In other types of land development permits, easements shall be used to delineate regional utility corridors.
 - C. All structures shall maintain a minimum distance of five feet from property or easement lines delineating the boundary of regional utility corridors, except for utility structures necessary to the operation of the utility corridor or when structures are allowed by mutual agreement in the utility corridors.
 - D. Any structure designed for human occupancy, except for utility structures not normally occupied that are necessary for the operation of the pipeline or a minor communication facility, shall maintain a minimum distance of one hundred feet from a hazardous liquid or gas transmission pipeline located within a regional utility corridor. The setback distance may be modified if the applicant demonstrates the following:
 - 1. A one-hundred-foot setback would deny all reasonable use of the property; or
 - 2. That the structure would be protected from radiant heat of an explosion by berming or other physical barriers; or
 - 3. That a one-hundred-foot setback would be impractical or unnecessary due to existing geographical features, streets, lot lines, or easements; or
 - 4. That no other practical alternative exists to meet the demand for service; and
 - 5. That the applicant will construct a hazardous liquid or gas transmission containment system or other mitigating actions if the county finds that leakage could accumulate within one hundred feet of the pipeline. Any containment system or other mitigating actions required by this section shall meet all applicable federal, state and local regulations.
- 2. The current definition of “regional utility corridor” contained at KCC 21A.06.980 equates the corridor with the entire easement. This same conceptual framework is carried over into the terminology used within KCC 21A.12.140 C requiring a setback from “the property or easement lines delineating the boundary of regional utility corridors”. In both instances the “easement” and “corridor” are regarded as being coterminous. KCC 21A.12.140 as presently written requires the entire utility easement to be set aside in a separate tract and excluded from adjacent lots.
 - 3. Documentation has been provided to the record demonstrating that the Kahn Subdivision qualifies as a receiving site under KCC Chapter 21A.37 for the 7 residential development right units proposed in support of the 98 lot total within the plat application.
 - 4. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
 - 5. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision

and are proportional to its impacts; are required to make the proposed plat reasonably compatible with

the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The preliminary plat application for the Kahn Subdivision, as revised and received on April 19, 2004, is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services. Documentation regarding the Transfer of Density Credits (TDR) shall be provided prior to engineering plan approval and final recording.

Any/all plat boundary discrepancies shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.

- c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

7. The 100-year floodplain for any on-site wetlands or streams shall be shown on the engineering plans and the final recorded plat per Special Requirement 2 of the 1998 King County Surface Water Design Manual (KCSWDM).
8. The stormwater design shall comply with the 1998 King County Surface Water Design Manual (KCSWDM) and shall meet the requirements of the Regionally Significant Stream Protection water quality menu.

Stormwater infiltration is proposed for this site and shown on the conceptual drainage plan. The infiltration facility shall meet the groundwater protection provisions in Section 5.4.1 (pg. 5-57) of the KCSWDM. Compliance with these provisions shall be demonstrated with the engineering plan submitted. The proposed infiltration facilities shall meet the 100-year conveyance overflow requirements in Section 5.4.1 of the KCSWDM.

9. The following road improvements are required to be constructed according to the 1993 King County Road Standards (KCRS):
- a. The subdivision entrance roads off 216th Ave SE (Road E) and off SE Covington-Sawyer Rd. (Road A) shall be improved at a minimum to the urban subcollector standard. A Road Variance (L03V0055) is approved for Road A intersection spacing.
 - b. Road B shall be improved at a minimum to the urban sub access street standard. The cul-de-sac portion of Road B serving lots 1 thru 11 shall be improved at a minimum to the urban minor access street standard.
 - c. Road D from Road E to Road G shall be improved to the urban sub access street standard.
 - d. Road C and the loop Roads D, F and G shall be improved at a minimum to the urban minor access street standard.
 - e. FRONTAGE: The frontage along S.E. Covington-Sawyer Road shall be improved at a minimum to the urban minor arterial standard. Twelve feet of additional right-of-way shall be dedicated along the SE Covington-Sawyer Road frontage.
 - f. FRONTAGE: The frontage along 216th Ave SE shall be improved at a minimum to the urban minor arterial standard. Twelve feet of additional right-of-way shall be dedicated along the 216th Ave SE frontage. A 35 foot right-of-way radius shall be dedicated at the northwest corner of the 216th Ave SE/SE Covington-Sawyer Road (lot 83), although

some additional right-of-way (for a multi-centered curve or other related intersection design element) may be required at the intersection during engineering plan review based upon the angle of intersection between 216th Avenue SE and Covington-Sawyer Road.

King County DOT/Transit Division has clarified its previous request, and a single bus stop shall be provided on the south side of the intersection of the Road "E" plat entrance, on the frontage of Tract "E". During engineering plan review, a determination will be made whether (based upon potential additional use by school buses serving both this plat and adjoining development) a bus pull-out should be provided at this bus stop. If determined necessary, the pull-out should provide sufficient storage for buses, an 8.5-foot wide concrete landing for the full length pull-out, plus an appropriate curb taper back to the half-street cross-section frontage improvements. Engineering plans for this frontage improvement shall be reviewed and approved by the City of Black Diamond, in accordance with the City road standards.

- g. Tracts F and G shall be improved at a minimum to the private access street standard per Section 2.09 of the KCRS. These tracts shall be owned and maintained by the lot owners served.
 - h. A public 10 feet wide pedestrian access tract shall be provided adjoining the east side of Lot 82. This tract shall be paved a minimum of 5 feet in width. This tract shall provide pedestrian access between Road F and SE Covington-Sawyer Road; it shall be owned and maintained by the homeowners association. Notes to this effect shall be shown on the final plat and the engineering plans.
 - i. Tracts N and O shall be improved at a minimum to the joint use driveway standard per Section 3.01 of the KCRS. These tracts shall be owned and maintained by the lot owners served. Notes to this effect shall be shown on the final plat and the engineering plans.
 - j. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.08 of the KCRS.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final

approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

13. There shall be no direct vehicular access to or from SE Covington-Sawyer Road or 216th Ave SE from abutting lots. A note to this effect shall appear on the engineering plans and the final plat.
14. The plant islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the final plat.
15. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in K.C.C. 21A.24. Permanent survey marking, and signs as specified in K.C.C. 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
16. Preliminary plat review has identified the following specific sensitive areas requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.

Wetlands

- a. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland edge.
- b. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- c. Buffer averaging may be proposed, pursuant to K.C.C. 21A.24.320, provided the total amount of the buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist.
- d. A minimum building setback line of 15 feet shall be required from the edge of the tract.

Alterations to Streams or Wetlands

- e. If alterations of streams and/or wetlands are approved in conformance with K.C.C. 21A.24, then a detailed plan to mitigate for impacts from that alteration will be required to be reviewed and approved along with the plat engineering plans. A performance bond or other financial guarantee will be required at the time of plan approval to guarantee that the mitigation measures are installed according to the plan. Once the mitigation work is completed to a DDES Senior Ecologist's satisfaction, the performance bond may be replaced by a maintenance bond for the remainder of the five-year monitoring period to guarantee the success of the mitigation. The applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation plan must be installed prior to final inspection of the plat.

- f. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
- a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans. Fencing and landscaping shall be provided around Tract D to prevent conflicts between recreation uses and vehicular traffic.
- b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
18. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
19. Street trees shall be provided as follows (per KCRS 5.03 and K.C.C. 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and

- intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the county has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at (206) 684-1622 to determine if SE Covington-Sawyer Road and/or 216th Ave SE is on a bus route. If either or both roads are a bus route, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
20. The following conditions have been established under SEPA authority as necessary requirements to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval.
- a. A 4-foot high fence and signs shall be located along the outer boundary of the wetland buffers (i.e. Sensitive Area Tract). The fencing and sign details shall be shown on the final engineering plans. Sensitive area signs shall be installed on the fence at 50-foot intervals or as deemed appropriate by DDES. Fence details and materials shall be reviewed by DDES during engineering plan review. The fencing and signs shall be maintained by the abutting lot owners and/or Homeowner's Association as identified on the face of the final plat. (King County Comprehensive Plan Policies E-107, E-134).
 - b. In order to mitigate the significant adverse impact that the proposed development will have at the intersection of SE 288th Street/216th Avenue SE intersection, the applicant

will widen 216th Avenue SE to provide a merge/refuge area for the westbound-to-southbound left turn movement off of SE 288th Street together with related roadway channelization and an illumination system designed in compliance with the King County Road Standards. In addition, the developer shall install conduits and related appurtenances (junction boxes) under 216th Avenue SE and South 288th Street that would be necessary for future traffic signalization system at this intersection.

Plans for these improvements shall be submitted to the City of Black Diamond and King County DOT for review and approval.

21. a. The BPA transmission easement shall be placed in a separate tract per KCC 21A.12.140. This will result in the reconfiguration and/or loss of lots.
 - b. If prior to final plat approval the King County Council enacts amendments to the King County Code that authorize portions of subdivision lots to be located within the easement or right-of-way boundaries of a regional utility corridor, the applicant may submit a modification to the preliminary plat to include yard area within the BPA easement boundaries, as depicted in the original application. Together with this proposed modification of the plat map, the applicant shall provide assurances satisfactory to DDES that BPA will accept the proposed extension of lots into its easement and that any conditions placed on such extension have been met. DDES shall process this modification as a minor preliminary plat map revision.
22. Prior to final plat approval the Applicant shall establish to the satisfaction of DDES which fire district will provide fire service to the plat. If Fire District 17 will serve the plat, then the Applicant's agreement with Black Diamond Fire Department (exhibit no. 45) shall be executed, and its implementation bonded or otherwise secured to the satisfaction of DDES, prior to final plat recording. Based on the fire facilities actually available to the subdivision at final plat recording, DDES shall consult with the Chief of Fire District No. 17 to determine which lots, if any, shall require sprinklers. Any sprinkling requirements shall be designated on the final plat.

ORDERED this 20th day of October, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 20th day of October, 2004, to the following parties and interested persons of record:

Robert Armstrong
Barghausen Consulting
18215 - 72nd Avenue South
Kent WA 98032

Jason Davis
P.O. Box 31
Black Diamond WA 98010

Ron Hayworth
24520 SE 24th Street
Issaquah WA 98029

John Herbert
Black Diamond Fire Dept. Chief
PO Box 249

John W. Jones
29100 - 215th Ave. SE
Kent WA 98042

Kevin Jones
The Transpo Group
11730 118th Ave. NE Suite 600

Black Diamond WA 98010

Jack Kahn
Kahn Family LLC
515 - 97th Pl. SE
Bellevue WA 98004

Eric LaBrie
ESM Consulting Eng.
720 S. 348th St.
Federal Way WA 98003

Jason Paulsen
City of Black Diamond
PO Box 599
Black Diamond WA 98010

Nancy Bainbridge Rogers
Cairncross & Hemplemann
524 Second Avenue, #500
Seattle WA 98104-2323

David Zielinski
City of Maple Valley, Pub.
P.O. Box 320
Maple Valley WA 98038

Nick Gillen
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Steve Townsend
DDES/LUSD
Land Use Inspections
MS OAK-DE-0100

Murray Kahn
2291 NE 60th St.
Seattle WA 98115

Donald & Yana Long
21007 SE 287th St.
Kent WA 98042

Ty Pendergraft
33400 9th Ave. S., Ste. 120
Federal Way WA 98003

Seattle KC Health Dept.
E. Dist. Environ. Health
14350 SE Eastgate Way
Bellevue WA 98007

Kim Claussen
DDES/LUSD
Current Planning
MS OAK-DE-0100

Kristen Langley
DDES/LUSD
Land Use Traffic
MS OAK-DE-0100

Larry West
DDES/LUSD
Geo Review
MS OAK-DE-0100

Kirkland WA 98034-7120

Dan Kolden
21532 SE 292nd Ct.
Kent WA 98042

Kelly Mann
Cairncross & Hemplemann
524 - 2nd Ave., #500
Seattle WA 98104

Ted A. Plattner
28919 - 211th Ave. SE
Kent WA 98042

Sherry Simmons
Sawyer's Grove HOA
21414 SE 292nd Pl.
Kent WA 98042

Lisa Dinsmore
DDES/LUSD
MS OAK-DE-0100

Carol Rogers
DDES/LUSD
MS OAK-DE-0100

Bruce Whittaker
DDES/LUSD
Prel. Review Engineer
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before November 3, 2004***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before November 10, 2004***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE SEPTEMBER 20, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03P0020.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Bruce Whittaker and Kristen Langley, representing the Department; Nancy Rogers and Murray Kahn, representing the Applicant; and Robert Armstrong, Eric LaBrie, Ron Haworth, Kevin Jones and John Herbert.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES file no. L03P0020
- Exhibit No. 2 DDES preliminary report for September 20, 2004
- Exhibit No. 3 Application received 7/31/03
- Exhibit No. 4A SEPA checklist received July 31, 2003;
- 4B Revised SEPA checklist received 2/12/04
- Exhibit No. 5 Mitigated Determination of Non-significance issued 7/9/04
- Exhibit No. 6 Affidavit of Posting indicating a 9/24/03, posting date; received by DDES on 9/25/03
- Exhibit No. 7 Plat map date April 19, 2004 (revision)
- Exhibit No. 8 Appeal from the City of Maple Valley, received 7/30/04 (file no. L04AP012)
- Exhibit No. 9 Assessor's maps: NW 4-21-06; SE 32-22-06; SW 33-22-06 and NE 5-21-6
- Exhibit No. 10 Traffic Study by The Transpo Group dated December 2003
- Exhibit No. 11 Addendum to traffic study by The Transpo Group dated 9/2/04
- Exhibit No. 12 Stipulation for Dismissal of Maple Valley SEPA Appeal, dated 9/17/04
- Exhibit No. 13A Letter from City of Black Diamond dated 4/02/04
- 13B Letter from City of Black Diamond dated 9/04/03
- Exhibit No. 14 Geotechnical study by Earth Consultants, Inc., dated 4/08/03
- Exhibit No. 15 Wetland Assessment by J.S. Jones and Assoc., Inc., dated 3/06/04
- Exhibit No. 16 Concept Landscape Plan by Barghausen Consulting Eng., Inc., received 4/19/04
- Exhibit No. 17 Bonneville Power Administration letter dated 3/24/04 re: tract no. V-C-119-A-503
- Exhibit No. 18 Level One Off-site Drainage Analysis by Barghausen Consulting Eng., Inc., dated 7/18/03
- Exhibit No. 19 Letter dated 4/06/04 re: road variance no. L03V0055
- Exhibit No. 20 Copies of photographs (8 color + 1 aerial color) with attachments
- Exhibit No. 21 Bonneville Power Administration letter dated
- Exhibit No. 22 Density Credit Transfer Agreement received 9/14/04
- Exhibit No. 23 Revised DDES recommendation fro 3 and 9.f
- Exhibit No. 24 DDES staff report for 9/20/04 with suggested Applicant changes in blue
- Exhibit No. 25 Copy of KCC 21A.08/030 Residential Land Uses, dated 12/03
- Exhibit No. 26 Fire District Receipt with attached parcel reports (2)
- Exhibit No. 27 Map of Fire Districts & Response Zones for King County, dated 10/03
- Exhibit No. 28 Preliminary plat map dated 7/31/03 with yellow highlighting
- Exhibit No. 29 Bonneville Power Administration letters dated 9/14/04, 3/24/04 and 6/13/02 with attachments

- Exhibit No. 30 Copy of KCC 21A.12.140 Setbacks – from regional utility corridors, dated 12/03
- Exhibit No. 31 Density Credit Transfer Agreement dated 2/18/04
- Exhibit No. 32 Proposed new condition re: land use agreement with BPA
- Exhibit No. 33 Land Use Agreement Example from Bonneville Power Administration, dated 9/23/02
- Exhibit No. 34 Diagrams and documents pertaining to Remington Division 3
- Exhibit No. 35 Diagram and document pertaining to Elk Run Div. 6
- Exhibit No. 36 Resume of Ronald W. Haworth
- Exhibit No. 37 Proposed new condition re: determined fire district
- Exhibit No. 38 Letter from the Black Diamond Fire Dept. dated 9/15/04
- Exhibit No. 39 2004-2010 Strategic Plan for the Black Diamond Fire Dept.
- Exhibit No. 40 Articles: 1) by Paul Grimwood re: Flashover and 2) by Robert C. Barr & Anthony P. Caputo re: Planning Fire Station Locations
- Exhibit No. 41 Letter from Hillis Clark Martin & Peterson re: fire district mitigation, dated 9/10/04
- Exhibit No. 42 Statement from Kelley Jensen re: determination of the mitigation figure, dated 9/15/04
- Exhibit No. 43 Additional language for condition 17.a submitted by Department of Development and Environmental Services
- Exhibit No. 44 Addition to Condition no. 8, new paragraph, submitted by DDES

The following exhibits were admitted to the record on October 4, 2004:

- Exhibit No. 45 Letter and mitigation agreement from Black Diamond Fire Department dated September 30, 2004
- Exhibit No. 46 Letter and attachments from Attorney Nancy Rogers dated October 4, 2004

The following exhibit was admitted to the record on October 19, 2004:

- Exhibit No. 47 Letter from Nancy Rogers dated October 18, 2004

SLS:gao
L03P0020 RPT